PT 03-9
Tax Type: Property Tax
Issue: Legal Standing

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

HAROLD J. FASSNACHT &	)	
MARK E. COEN,	)	Docket No. 02-PT-0011
Petitioners	)	
v.	)	John E. White,
THE DEPARTMENT OF REVENUE	)	Administrative Law Judge
OF THE STATE OF ILLINOIS	)	

ORDER REGARDING THE RAILROADS' MOTIONS TO DISMISS AND TO STAY DISCOVERY

Appearances: Michael Freed and Barat McClain, Much, Shelist, Freed, Denenberg, Ament & Rubenstein, and Harold Spector appeared for Harold Fassnacht & Mark Coen; Michael Abramovic, Special Assistant Attorney General, appeared for the Illinois Department of Revenue; Mark Davis and Jason Shilson, O'Keefe, Ashenden, Lyons & Ward, appeared for nine intervening railroad companies.

Synopsis:

This matter involves objections and requests for hearing filed by Harold Fassnacht ("Fassnacht") and Michael Coen ("Coen") (hereinafter, "Petitioners") challenging the Department's valuations of the operating properties of nine railroads for tax years 2001 and 2002. The nine railroads that own the properties are: the Burlington Northern and Santa Fe Railway Company; the Union Pacific Railroad Company; Canadian National/Illinois Central, on behalf of its subsidiaries, the Illinois Central Railroad Company and Grand Trunk Western Railroad Company; Norfolk Southern Corporation; CSX Transportation, Inc.; Belt Railway Company of Chicago; Soo Line

Railroad Company; and Indiana Harbor Belt Railroad Company (hereinafter, "the Railroads"). The Railroads intervened in this dispute following the denial of their motion to dismiss based on §§ 2-301 and 2-619 of the Code of Civil Procedure.

The instant matter involves the Railroads' renewed motion to dismiss Petitioners' objections and requests for hearing, and their motion to stay discovery, both of which motions the Department joined. The motions have been fully briefed. The Railroads' motion to dismiss is premised, in part, on facts set forth in a stipulation signed by Petitioners and the Railroads. In summary, but not verbatim, that stipulation provides:

1. Petitioners filed the instant objections to the 2001 operating property assessments of each of the Railroads by letters dated December 7, 2001. Following the Department's denial of their original objections, petitioners filed requests for review with the Department's Office of Administrative Hearings. Throughout each stage of the proceedings, petitioners claim to be "persons … aggrieved" by the 2001 assessments of the Railroads, as that phrase is used § 8-35 of the Property Tax Code ("PTC"), 35 **ILCS** 200/8-35. Stipulation ("Stip.") ¶ 1.
2. Neither Fassnacht nor Coen has any ownership or other interest in any property of any of the Railroads, assessable or otherwise. Petitioners are not responsible to pay taxes imposed upon any property of any of the Railroads. Stip. ¶ 2.
3. Petitioners are private citizens, and neither of them is an official, employee or agent of any taxing body, governmental agency or governmental entity of any kind. Stip. ¶ 3.
4. Petitioner Fassnacht has an ownership interest in, pays property taxes upon, and resides in a condominium unit located at 1000 South Plymouth Court, Chicago,

Illinois, which is identified on the tax records of Cook County Illinois with a Property Index Number ("PIN") of 17-16-423-002-1083 (hereinafter, "the Fassnacht parcel"). For tax year 2000, Cook County assessing authorities calculated the assessed valuation of the Fassnacht parcel as $19,797, and Fassnacht was responsible to pay approximately $3,428.20 in total annual taxes for tax year 2000 regarding that parcel. For tax year 2001, the Fassnacht parcel had the same assessed valuation as it had for 2000. Stip. ¶ 4.

5. Petitioner Coen has an ownership interest in, pays property taxes upon, and resides in a condominium unit located at 4114 North Kenmore Avenue, Chicago, Illinois, which is identified on the tax records of Cook County Illinois with a PIN of 14-17-401-070-1024 (hereinafter, "the Coen parcel"). For tax year 2000, Cook County assessing authorities calculated the assessed valuation of the Coen parcel as $20,526, and Coen was responsible to pay approximately $3,554.44 in total annual taxes for tax year 2000 regarding that parcel. For tax year 2001, the Coen parcel had the same assessed valuation as it had for 2000. Stip. ¶ 5.

6. Neither Fassnacht nor Coen own or are responsible to pay property taxes upon any real property situated within Illinois, except for the residences described in the above paragraphs. Stip. ¶ 6.

7. Neither Fassnacht nor Coen is aware of a particular dollar amount by which the annual property taxes payable on his residence might be decreased as a result of any increase in the 2001 assessments of any of the Railroads by the Department. Nor is either aware whether any change in the 2001 assessments of any of the

Railroads would potentially affect his own assessment (as opposed to his taxes). Stip. ¶ 7.

Analysis:

The Railroads' motion to dismiss is based on § 2-619 of Illinois' Code of Civil Procedure ("Code"). 735 **ILCS** 5/2-619(a)(9); Railroads' Renewed Motion to Dismiss the Proceedings ("Railroads' Motion") p. 1. The Railroads assert that since Petitioners are acting solely in their capacity as individual Illinois property taxpayers, they lack standing under § 8-35 specifically, and under Illinois law generally, to challenge the Department's determination of the value of the Railroads' operating properties, because they are not "persons … aggrieved" by such action. Railroads' Motion, ¶¶ 1, 3-4, 6; 35 **ILCS** 200/8-35.[1]

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[1] During the period at issue, 35 **ILCS** 200/8-35 provided as follows:

> Notification Requirements — Assessments Made By The Department. Upon completion of its original assessments, the Department shall publish a complete list of the assessments in the State "official newspaper." Any person feeling aggrieved by any such assessment may, within 10 days of the date of publication of the list, apply to the Department for a review and correction of that assessment. Upon review of the assessment, the Department shall make any correction as it considers just.
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> Notice of each exemption decision made by the Department under Sections 15-25, 16-70 or 16-130, shall be given by certified mail to the applicant for exemption.
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> If review of an assessment has been made or if an exemption decision has been made by the Department, and notice has been given of the Department's decision, any party to the proceeding who feels aggrieved by the decision, may file an application for hearing. The application shall be in writing and shall be filed with the Department within 20 days after notice of the decision has been given by certified mail. Petitions for hearing shall state concisely the mistakes alleged to have been made or the new evidence to be presented.
>
> No action for the judicial review of any assessment or exemption decision of the Department shall be allowed unless the party commencing such action has filed an application for a hearing and the Department has acted upon the application.

Lack of standing is an affirmative matter that is properly raised under Code § 2-619(a)(9). Glisson v. City of Marion, 188 Ill. 2d 211, 220, 720 N.E.2d 1034, 1039 (1999). The doctrine of standing is designed to prevent those with no interest in a controversy from bringing suit. Standing assures that issues are raised only by parties with a real interest in the outcome of the controversy. *Id*. at 221, 720 N.E.2d at 1039. In Illinois, standing requires some injury in fact to a legally cognizable interest. Greer v. Illinois Housing Development Authority, 122 Ill. 2d 462, 492, 524 N.E.2d 561, 574-75 (1988). The claimed injury, whether actual or threatened, must be: (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Id*. at 492-93, 524 N.E.2d at 575.

The factual bases for the Railroads' renewed motion to dismiss are set forth in the stipulation entered into between them and Petitioners. Railroads' Motion, ¶¶ 1, 3-4, 6. That stipulation shows that Petitioners are strangers to the properties at issue, and strangers to the Railroads. Petitioners pay Illinois property tax regarding their individual residences, each of which is located in Cook County. The stipulation also shows that Petitioners have no knowledge that the assessed values of their residences would decrease if the Department were to increase the value of the Railroads' property, although they assert that their tax bills would decrease in that event.

The crux of Petitioners' claim to standing is contained in the following part of their response:

> … A bedrock principle of Illinois tax law is that the

> The extension of taxes on an assessment shall not be delayed by any proceeding under this Section. In cases where the assessment is revised or the exemption granted, the taxes extended upon the assessment, or that part of the taxes as may be appropriate, shall be abated or, if already paid, refunded.

> burden of taxation should fall equally on all taxpayers, so that one taxpayer's failure to meet its obligation will not increase the burden imposed on all others. *Rosewell v. Bulk Terminals Co.*, 73 Ill. App. 3d 225, 230, 390 N.E.2d 1294, 28 Ill. Dec. 704, 709 (1st Dist. 1979) (citing *In re Estate of Schureman*, 8 Ill. 2d 125, 127, 133 N.E.2d 7 (1956); *Nix v. Smith*, 32 Ill. 2d 465, 471, 207 N.E.2d 460 (1965)).
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> Under this principle, a statute may provide that taxpayers such as petitioners may challenge an undervaluation of the Railroads' property. For example, in *Dozoretz v. Frost*, 145 Ill. 2d 325, 583 N.E.2d 505, 164 Ill. Dec. 589 (1991), the Supreme Court of Illinois held that a taxpayer whose taxes would decrease by only $20 if he were successful in his challenge of the underassessment of others' real estate, was entitled to file a tax objection complaint with the Cook County Board of Appeals. [footnote omitted]. The Supreme Court reasoned that the Dozoretz taxpayer was "any taxpayer" under the relevant statute, since (like Petitioners here) he paid real estate taxes on his home in Cook County. *Id*. at 333, 583 N.E.2d 509, 164 Ill. Dec. 593. [footnote omitted]. It is noteworthy that Dozoretz has not been limited or even questioned by any subsequent Illinois Supreme Court opinion in the eleven years since it was decided, which supports its continued validity and applicability here. ***

Petitioners' Response to Renewed Motion to Dismiss and Motion to Stay Discovery ("Petitioners' Response"), p. 12.

Those two paragraphs show that Petitioners misapprehend the principle to be drawn from the cases they cite. Rosewell v. Bulk Terminals involved the Cook County Assessors' attempt to tax, as omitted property, leasehold interests originally assessed pursuant to an amendment to a provision, which amendment was later declared unconstitutional. The court there had to determine whether then § 220 of the PTC, which authorized back assessments if the property in question was omitted from assessment or was defectively described or assessed, applied to the situation before it. Bulk Terminals Co., 73 Ill. App. 3d at 229, 390 N.E.2d at 1298-99. The specific proposition for which

the court in Bulk Terminals cited In re Estate of Schureman and Nix v. Smith is best illustrated by reviewing the issues, arguments and holdings in that case:

> Bulk and North Pier contend that the property in question was not "omitted" from the 1971 and 1972 assessments. Rather, they assert that the entire property and all interests therein, including their leasehold interests, were assessed as exempt. Under the applicable case law, they argue, property so assessed may not be reassessed and back taxed, and therefore the back taxes are invalid.
>
> The Collector points out that under section 220 of the Revenue Act, the back tax assessments would be authorized if the property in question was omitted from assessment or was defectively described or assessed. The Collector contends that the back taxes in the case at bar may be sustained on either ground. We agree.
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> Prior to 1971, the leasehold interests of Bulk and North Pier were taxed under section 26 of the Revenue Act of 1939. (Ill.Rev.Stat.1967, ch. 120, par. 507.) In 1971 and 1972, the assessor sought to assess their leasehold interests pursuant to amended section 26. (Ill.Rev.Stat.1969, ch. 120, par. 507.) However, that section was declared invalid in *Dee-El Garage, Inc. v. Korzen* (1972), 53 Ill.2d 1, 289 N.E.2d 431. While the court in that case declined to consider the issue of the authority of the assessor to impose a back tax for the years during which the invalid use tax was levied, the court held that the provisions of section 26 as they existed prior to the 1969 amendment remained in effect. Thus, the leasehold interests were, and are, taxable under section 26 of the Revenue Act (Ill.Rev.Stat.1973, ch. 120, par. 507; See *North Pier Terminal Co. v. Tully* (1976), 62 Ill.2d 540, 543, 546, 343 N.E.2d 507), but until the instant back tax assessments were made, the leasehold interests had not been so taxed. Whether we view the assessor's abortive attempt to assess pursuant to amended section 26 and his resulting failure to assess pursuant to section 26 as an omission of property from assessment or as a defective assessment of property liable to be taxed, in either case the assessor would be authorized to assess the property under section 220 of the Revenue Act of 1939. Ill.Rev.Stat.1973, ch. 120, par. 701; Cf. *Kelly v. Jones* (1919), 290 Ill. 375, 125 N.E. 334.
>
> This interpretation is in harmony with the general principle that "(t)ax laws ought to be given a reasonable construction without bias or prejudice against either the

> taxpayer or the State, in order to carry out the intention of the legislature and further the important public interest that such statutes subserve." (*Goodfriend v. Board of Appeals* (1973), 18 Ill.App.3d 412, 421, 305 N.E.2d 404, 412.) It obviously furthers the clear design of section 26 to tax leasehold interests in tax-exempt properties. (See *People ex rel. Korzen v. American Airlines, Inc.* (1967), 39 Ill.2d 11, 14, 233 N.E.2d 568.) More specifically, this interpretation effectuates the plain intent of section 220 to provide for omitted property assessments where property which is liable to be taxed has failed to pay taxes (See Ill.Rev.Stat.1973, ch. 120, par. 701), thus promoting the policy that the burden of taxation should fall equally on all (*In re Estate of Schureman* (1956), 8 Ill.2d 125, 127, 133 N.E.2d 7), so that one taxpayer's failure to meet his obligation will not increase the burden imposed upon other taxpayers. (*Nix v. Smith* (1965), 32 Ill.2d 465, 471, 207 N.E.2d 460.) Finally, this result is in accord with analogous holdings and dicta in this and other states permitting omitted property assessments after initial assessments have been declared invalid or void. See *Kelly v. Jones* (1919), 290 Ill. 375, 125 N.E. 334; *Colvard v. Ridley* (1963), 219 Ga. 361, 133 S.E.2d 364; *City of Detroit v. Fruehauf Trailer Co.* (1954), 339 Mich. 256, 63 N.W.2d 666; *In re Blatt* (1937), 41 N.M. 269, 67 P.2d 293; *Clark v. Lincoln County* (1964), 54 Tenn.App. 13, 387 S.W.2d 360; *Federal Land Bank of Houston v. State* (Tex.Civ.App. 1958), 314 S.W.2d 621, Rev'd in part on other grounds (1959), 160 Tex. 282, 329 S.W.2d 847; *King County v. Rea* (1944), 21 Wash.2d 593, 152 P.2d 310; *State ex rel. Baker v. Haugen* (1916), 164 Wis. 443, 160 N.W. 269.

Bulk Terminals Co., 73 Ill. App. 3d at 229-30, 390 N.E.2d at 1298-99 (emphasis added).

The principle of Illinois law that Petitioners describe as bedrock, therefore, has traditionally been invoked when, for some reason, taxes were not extended upon taxable property, or when taxes were extended on taxable property, but the owner failed to pay them. Nix v. Smith, 32 Ill. 2d at 466, 207 N.E.2d at 461 (action to set aside tax deeds issued for properties sold at tax sale denied); In re Shureman's Estate, 8 Ill. 2d 125, 126-27, 133 N.E.2d 7, 8-9 (1956) (bequest to fraternal organization held subject to inheritance

tax because it was not a charitable bequest that was exempt from taxation); Supreme Lodge M.A.F.O. v. Board of Review of Effingham County, 223 Ill. 54, 55-56, 79 N.E. 23, 23-24 (1906) (statutory exemption from personal property tax for money held in Illinois by fraternal organization exclusively for fraternal organization's use, violated Illinois constitution, and money was subject to personal property taxation); Bulk Terminals Co., 73 Ill. App. 3d at 229, 390 N.E.2d at 1298-99 (tax extended on property erroneously omitted from prior year's assessment upheld). In short, the bedrock principle of those cases is that, if one's property is subject to tax generally applicable to all such property, one must pay it. As more specifically applicable to property tax cases, the burden that the courts acknowledged was being imposed on the owners of such taxable property was the obligation to pay tax uniformly extended on his property, as measured by the value the assessor, or the applicable statute, assigned to the property. Nix v. Smith, 32 Ill. 2d at 466, 207 N.E.2d at 461; Supreme Lodge M.A.F.O. v. Board of Review of Effingham County, 223 Ill. at 55-56, 79 N.E. at 23-24; Bulk Terminals Co., 73 Ill. App. 3d at 229, 390 N.E.2d at 1298-99. That is the burden that is similarly imposed on every other owner of taxable property.

Contrary to Petitioners' suggestion, Bulk Terminals Co. does not stand for the proposition that if a particular taxpayer's property has been assigned a value that is less than what some other taxpayer thinks the value should be, the allegedly underassessed taxpayer becomes a burden to all other taxpayers. Nor is that proposition a bedrock principle of Illinois law. Petitioners would expand the scope and nature of a taxpayer's burden from an obligation to pay tax uniformly measured by the appropriate assessor, to an obligation to pay tax as measured by the value that one of his neighbors — or a

taxpayer in an adjacent county, or a taxpayer from across the state — believes should be assigned to the property.

In the second paragraph of Petitioners' argument, quoted *supra*, pp. 5-6, they state that a statute *may* provide that taxpayers, like themselves, are able challenge the Department's alleged undervaluation of other taxpayer's, like the Railroads', property. And that's really the point. It is clear that the Illinois General Assembly *could* grant such a right to "any taxpayer" (*see* Dozoretz, 145 Ill. 2d at 333, 335, 583 N.E.2d at 509-10); the question is, did it do so in § 8-35? Petitioners assert, in effect, that Dozoretz supports a conclusion that § 8-35 reflects the legislature's intent to grant to any Illinois taxpayer a right akin to the right § 16-115 grants to any taxpayer who wants to challenge the Cook County Assessor's valuation decisions before the Cook County Board of Review. *See* Petitioners' Response, pp. 12-13. Whether private taxpayers can demand a Department hearing to protest the Department's valuation of another's property pursuant to PTC § 8-35 is a case of first impression within the Department's office of administrative hearings, and, to my knowledge, within Illinois.

Petitioners identify two pecuniary interests that they claim give them standing to challenge the Department's valuation of the Railroads' property. First, Petitioners allege a direct pecuniary interest in the Department's actions here because, they contend, any increase in the Railroads' assessments will directly reduce their individual tax bills. Petitioners' Response, p. 7 ("an underassessment of one taxpayer will increase the tax bills of others ….") and Exhibit F thereto (Lefakis affidavit, ¶ 8). Petitioners also contend that, "while the decrease in Petitioners' taxes may be small as a result of any increase in the Railroads' assessments, the decrease for all Illinois taxpayers will be

substantial." Petitioners' Response, pp. 12-13. Thus, Petitioners assert an interest in the difference between what all *other* Illinois property taxpayers will pay if the Department's valuations of the operating properties here remain the same, and what those other taxpayers would pay if the Department increased the Railroads' assessments. I will address each interest in turn, beginning with the latter.

As a simple matter of definition, and even if the Department's valuation of the property at issue here was, in fact, too low, Petitioners cannot have been directly injured by the putatively higher tax bills of all other Illinois property taxpayers. A "direct" injury is an injury that "[h]a[s] no intervening persons, conditions, or agencies; immediate …." The American Heritage Dictionary of the English Language (Houghton Mifflin Company) (4th ed. 2000) (definition of the adjective form of the word "direct," via www.dictionary.com). Petitioners are directly injured, e.g., if they each break one of their legs, but not if each of their neighbors breaks a leg, and not if every other Illinois property taxpayer breaks a leg. Similarly, Petitioners suffer no direct injury if every other Illinois taxpayers' property tax bills are too high.

Petitioners only potential direct injury lay in their claim that their own tax bills are greater than they should be because the Department erroneously undervalued the Railroads' properties. *See* Schlenz v. Castle, 115 Ill. 2d 135, 143, 503 N.E.2d 241, 244 ("plaintiffs … only stake in the underassessment of other types of property is its effect on their taxes"). They base their allegation that their tax bills will be reduced if the Department corrects its alleged erroneous valuations on the opinion of an attorney, Gregory Lefakis ("Lefakis"), whose opinion is included in a certification attached to their Response. Lefakis' certification provided, in pertinent part:

1. I am a principal in the law firm of Liston & Lefakis, P.C., in Chicago, Illinois, and am a member in good standing of the Illinois bar. I submit this Certification in support of Petitioner'' Response to Renewed Motion to Dismiss and Motion to Stay Discovery.

2. For approximately 20 years, I have concentrated my practice in the area of property tax law in Illinois and other states.

3. I was employed by the Cook County Assessor's Office from 1972 to 1983 in various capacities. I was General Counsel for that office from 1982 to 1983, wherein I was responsible for advising the Assessor's office regarding legal matters and for coordinating pending cases involving the Assessor's office with the Cook County State's Attorney's office.

4. Prior to that time, I was employed by the Illinois Department of Local Government Affairs from 1973 to 1977, as Property Assessment and Equalization Supervisor, in which position I was responsible for conducting the annual statistical studies for inter-county equalization, for advising local assessing officials on property tax administration issues, and for supervision of several functions involving property tax administration within the Department. In that capacity, I worked with the Department's appraisers on establishing valuation procedures for calculating, among other things, real property tax assessments for railroad operating property.

* * *

7. Counsel for Petitioners in the above-captioned matter have asked me, based on my expertise in Illinois real property tax law, to opine whether an increase in the real property assessments of the nine railroads whose assessments are at issue in this matter, would result in a reduction of the real property taxes of Petitioners, who are Cook County, Illinois real property taxpayers.

8. Based on my experience in Illinois real property tax law, it is my opinion that Petitioner's real property taxes would be less than they otherwise would be, all other factors being equal, if the nine railroads' real property tax assessments, in the same taxing jurisdiction as Petitioners, were increased.

9. If asked to testify to the above in this matter, I would so testify.

Petitioners' Response, Ex. F.

In their reply, the Railroads acknowledge that they do not dispute, as a general theoretical proposition, Lefakis' opinion that " 'all other factors being equal' (an enormous qualification), if some assessments are raised relative to other assessments, at some point the tax burden on those not raised could be reduced." Reply Memorandum of Law in Support of Railroads' Renewed Motion to Dismiss the Proceedings ("Railroads' Reply"), p. 3 n.1. The Railroads assert, however, that Lefakis' opinion is irrelevant to the affirmative defense raised, which, the Railroads assert, "concerns who may claim that other assessments are too low, and in what forum … such a claim [may] proceed." *Id*. Thus, the Railroads claim that Lefakis' opinion is irrelevant because the affirmative matter asserted in their motion is Petitioners' lack of any legally protectable interest in obtaining a hearing under § 8-35, to complain about the Department's valuation of someone else's property.

I view Lefakis' certification somewhat differently than the Railroads. I consider Lefakis' opinion to be insufficient to support Petitioners' claim of standing because he fails to articulate facts showing some distinct and palpable injury to Petitioners as a result of the Department's action. Affidavits filed to support or to defend against a motion to dismiss filed pursuant to Code § 2-619 are governed by Illinois Supreme Court Rule 191(a). That rule provides:

> Rule 191. Proceedings Under Sections 2-1005, 2-619 and 2-301(b) of the Code of Civil Procedure
>
> (a) Requirements. Motions for summary judgment under section 2-1005 of the Code of Civil Procedure and motions for involuntary dismissal under section 2-619 of the Code of Civil Procedure must be filed before the last date, if any, set by the trial court for the filing of dispositive motions. Affidavits in support of and in opposition to a motion for summary judgment under section 2--1005 of the

> Code of Civil Procedure, affidavits submitted in connection with a motion for involuntary dismissal under section 2-619 of the Code of Civil Procedure, and affidavits submitted in connection with a special appearance to contest jurisdiction over the person, as provided by section 2--301(b) of the Code of Civil Procedure, shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used.

Illinois Supreme Court Rule 191(a) (emphasis added).

Lefakis' affidavit contains specific facts sufficient to establish that he has over 20 years of knowledge and experience in Illinois property matters. Petitioners' Response, Ex. F, ¶¶ 3-4. It fails, however, to set forth any facts to support his opinion that an increase in the Department's valuation of the Railroads' Illinois properties would lead, directly, to a decrease in Petitioners' tax bills. The Railroads hit the nail on the head when they acknowledge that, "if some assessments are raised relative to other assessments, *at some point* the tax burden on those not raised *could be reduced*." Railroads' Reply, p. 3 n.1 (emphasis added). The only problem is, there is nothing in Lefakis' statement to show that, were the Department to increase the value assigned to each (or any) of the Railroad's operating properties, such a point would be reached here. Moreover, Petitioners failed to attach to Lefakis' affidavit any documents upon which his wholly conclusory opinion might have been based.

The requirements of Rule 191(a) are not optional; they must be followed. Robidoux v. Oliphant, 201 Ill. 2d 324, 775 N.E.2d 987 (2002). If not, the affidavit may

properly be stricken or disregarded. *Id*., at 338-39, 345, 775 N.E.2d at 995, 999. Since Lefakis' certification contains no particularly stated facts to support his opinion that an increase in the Railroads' assessed valuations would decrease Petitioners' tax bills, his opinion is wholly conclusory. Thus, Petitioners have failed to articulate facts showing a distinct and palpable injury caused by the Department's valuation of the Railroads' properties. Greer, 122 Ill. 2d at 492-93, 524 N.E.2d at 575.

I return now to the Railroads' claim that Petitioners lack any cognizable interest in obtaining a hearing under § 8-35. The Railroads contend that both Schlenz v. Castle and Highland Park Women's Club stand for the proposition that Illinois law, in general, does not authorize private taxpayer complaints seeking to challenge tax assessments extended to property belonging to others. The Railroads assert that this proposition also applies to administrative hearings authorized by § 8-35 of the PTC. *E.g.*, Memorandum of Law in Support of Railroads' Renewed Motion to Dismiss the Proceedings ("Railroads' Brief"), p. 8. The Railroads argue that Petitioners cannot be "persons … aggrieved" by the Department's alleged undervaluation of someone else's property.

Petitioners respond that both Highland Park Women's Club and Schlenz v Castle are inapplicable to this dispute. Petitioners claim that § 8-35 of the PTC is different than the statute under which the taxpayer asserted standing in Highland Park, and that this matter is not a suit to collect taxes, as was the case in Schlenz v. Castle, but an administrative matter clearly authorized by § 8-35. *See* Petitioners' Response, pp. 4-6, 15-16. Petitioners point out that the Illinois Supreme Court held in Dozoretz that the statute there at issue used the phrase "any taxpayer," whereas § 8-35 uses the phrase "any person," and that the Dozoretz Court also acknowledged that "any person" is broader

than "any taxpayer." Thus, Petitioners contend that § 8-35 grants the right to a Department hearing to, at least, any Illinois taxpayer who timely files an objection to the Department's published assessments and who, thereafter, timely files a request for hearing.

The plain text of § 8-35, however, does not grant to "any taxpayer" the right to object to the Department's valuation or exemption decisions. 35 **ILCS** 200/8-35. Rather, it grants that right to "[a]ny person feeling aggrieved" by such a decision. *Id*. Under § 16-115, "any taxpayer" can file a complaint with the Cook County Board to contest someone else's assessment, for a good reason or for no reason at all. 35 **ILCS** 200/16-115 (*formerly* Ill. Rev. Stat. ch. 120, ¶ 598 (1987)); Dozoretz, 145 Ill. 2d at 333, 583 N.E.2d at 509. Thus, there is a critical difference between the text of the provision the court construed in Dozoretz and the text of § 8-35. The statute at issue in Dozoretz had no grievance component, whereas § 8-35 plainly does. The legislature's decision to incorporate that grievance component into § 8-35, I believe, was not unintentional.

The phrase "any person feeling aggrieved," moreover, ought not be read to reflect the Illinois General Assembly's intent to grant a hearing to any person merely "feeling" aggrieved by one of the Department's valuation or exemption decisions, even though he is not, in fact, injured by such a decision. The legislature could not have meant to elevate "feelings" over facts, and settled Illinois law establishes that, generally, strangers have no cognizable interest in challenging the tax status or assessed value of someone else's property. *See* Schlenz v. Castle, 115 Ill.2d 135, 144, 503 N.E.2d 241, 245 (1986) ("plaintiffs' interest in the taxation of any parcel of exempt property is extremely remote"); Highland Park Women's Club, 206 Ill. App. 3d at 462-63, 564 N.E.2d at 899

("Hamer's interest as a Lake County taxpayer in the question of whether Ravinia's land should be exempt is too remote to provide him standing to appeal.").

Further, § 8-35 is the statutory provision that sets forth the circumstances pursuant to which Department hearings may be sought for both its assessment *and* its exemption decisions. 35 **ILCS** 200/8-35. The court in Highland Park Women's Club held that a private taxpayer had no standing to contest a prior exemption decision, and could not be a party in a Department hearing to be held to review such a determination. Highland Park Women's Club, 206 Ill. App. 3d at 462-63, 564 N.E.2d at 899. Petitioners contend that Highland Park Women's Club is also inapplicable because that case involved an exemption decision whereas these matters involve an assessment decision. Petitioners' Response, p. 15. Thus, Petitioners would have me conclude that "any person feeling aggrieved," as used in § 8-35, means one thing for persons who disagree with one of the Department's exemption decisions, but something else for persons who disagree with one of its assessment decisions. The better view, I am convinced, is to treat the phrase consistently for both types of cases.

Finally, Petitioners argue that court decisions from other states support the application of the Dozoretz court's decision to § 8-35, so that any Illinois taxpayer similarly has the right to a hearing to contest any alleged Department underassessment of another's property. Petitioners' Response, pp. 13-15. Those decisions, however, interpret statutes that are part of schemes that are not like Illinois' scheme of providing property tax relief. On the whole, Illinois' scheme is focused more on granting to taxpayers the opportunity to complain about alleged mistakes made regarding their own property, rather than granting to them the opportunity to complain about mistakes made regarding

their neighbor's property. *Compare, e.g.*, Schlenz v. Castle, 115 Ill. 2d at 144, 503 N.E.2d at 245 ("Permitting citizens such as the plaintiffs to litigate the exemption status of their neighbors would turn them into *de facto* special assistant State's Attorneys and would lead to chaos and confusion.") *and* Highland Park Women's Club, 206 Ill. App. 3d at 462-63, 564 N.E.2d at 899 ("Hamer's interest as a Lake County taxpayer in the question of whether Ravinia's land should be exempt is too remote to provide him standing to appeal.") *with* Dozoretz, 145 Ill. 2d at 335, 583 N.E.2d at 510 ("Plaintiff sought only a declaration of his status as a taxpayer and enforcement of his statutory right to a hearing before the Board."). On this point, the court's observations in Coleman v. McLaren, 631 F.Supp. 749 (N.D. Ill. 1985), are instructive:

> *** Illinois law does not permit an individual taxpayer to launch a system-wide attack on assertedly non-uniform assessment "patterns." But after all, that is not much different in concept from the jurisprudential rules that have come to be grouped under the rubric of "standing." What is essential to the concept of "remedy," and what is true in Illinois, is that each individual taxpayer has the right to contest his or her *own* assessment on the ground comparable properties were assessed at lower debasement fractions. [footnote omitted] Though that system, under which each overassessed taxpayer fights his or her own battle, might be criticized (shortsightedly) as a piecemeal approach, [footnote omitted] it certainly affords a right to relief. ***

Coleman v. McLaren, 631 F.Supp. at 753; *see also id*. at 751-52 (detailing "the state remedies available to [Illinois] taxpayers who wish to challenge their real estate tax assessments.");[2] Railroads' Brief, p. 7 and Railroads' Reply, p. 4 (briefly describing the

[2] Coleman v. McLaren was cited approvingly by the court in Highland Park Women's Club, 206 Ill. App. 3d at 460, 564 N.E.2d at 897-98.

same Illinois scheme of providing property taxpayer relief, but with current statutory citations).

I conclude that the legislature did not intend the phrase "any person feeling aggrieved," as used in § 8-35, to mean "any Illinois taxpayer." 35 **ILCS** 200/8-35. Based on the facts disclosed in the parties' stipulation, Petitioners' claimed interest in the values the Department assigned to the Railroads' operating properties for the years at issue is too remote for them to have been "aggrieved" by such decisions. Greer, 122 Ill. 2d at 492-93, 524 N.E.2d at 575; Schlenz v. Castle, 115 Ill. 2d at 144, 503 N.E.2d at 245; Highland Park Women's Club, 206 Ill. App. 3d at 462-63, 564 N.E.2d at 899. If nothing else, there is no verifiable allegation or competent evidence in this record showing that Petitioners suffered any real or direct injury to a cognizable interest as a result of the Department's valuations here. Stip. ¶¶ 2-7; Greer, 122 Ill. 2d at 492-93, 524 N.E.2d at 575. I recommend, therefore, that the Director grant the Railroads' renewed motion to dismiss these consolidated matters for 2001 and 2002.

WHEREFORE, IT IS HEREBY RECOMMENDED THAT:

- The Railroads' Motion to Dismiss, which the Department joined, be granted.
- Petitioners' consolidated protests for 2001 and 2002 be dismissed.
- Because the Railroads' Motion to Dismiss is granted, the Railroads' motion to stay discovery is moot.

Date: 2/11/2003

John E. White
Administrative Law Judge